

ORIGINAL

In the Matter of:

WT Docket No. 94-147

JAMES A. KAY, JR.

Licensee of one hundred fifty
two Part 90 licenses in the
Los Angeles, California area

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:) WT DOCKET No.: 94-147
JAMES A. KAY, JR.)
Licensee of one hundred fifty)
two Part 90 licenses in the)
Los Angeles, California area.)

Courtroom 1, Room A-363
The Portals Building
445 12th Street, S.W.
Washington, D.C.

Monday,
January 11, 1999

The parties met, pursuant to the notice of the
Judge, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACHKIN
Chief Administrative Law Judge

APPEARANCES:

On behalf of James A. Kay, Jr.:

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I N D E X

Hearing Began: 9:00 a.m.

Hearing Ended: 3:05 p.m.

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
William T. Gerrard	1623	1645	1661		1625
Barbara Ashauer	1663	1683	1687		
Marc D. Sobel	1691	1706 1732	1780	1783	

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329	1706		p.238, l.15 - p.239, l.16
331	1698	1700	
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James A. Kay, Jr.:

4	1717	1756
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P R O C E E D I N G S

CHIEF JUDGE CHACHKIN: First of all, Mr. Keller, Mr. Shainis, why do we need Anne Marie Wypijewski, W-Y-P-I-J-E-W-S-K-I?

MR. SHAINIS: Your Honor, part of the defense to the 308(b) issue will be Mr. Kay's state of mind and --

CHIEF JUDGE CHACHKIN: Then, let me ask you that question. Did Mr. Kay ever speak to Ms. Wypijewski?

MR. SHAINIS: I don't believe so, Your Honor.

CHIEF JUDGE CHACHKIN: So, how could it affect his state of mind?

MR. SHAINIS: Because her actions --

CHIEF JUDGE CHACHKIN: Well, wait a minute. We're talking about, in order to affect his state of mind, she had to speak to him.

MR. SHAINIS: No, not --

CHIEF JUDGE CHACHKIN: Wait a minute, wait a minute. If he spoke to someone else, who related what she said, then it would be that individual, perhaps, who might be a witness. Certainly, he couldn't have been affected by what she said to him, because she never spoke to him.

MR. KELLER: No, it's what she did, Your Honor.

CHIEF JUDGE CHACHKIN: Fine, what she did, her actions -- well, in the first place, if we're talking about state of mind, we're not dealing with the truth. We're not

1 dealing with hearsay, so we don't need her to relate about
2 her actions.

3 Since he heard about her actions from other
4 individuals -- so, obviously, we don't need her to relate
5 what she told this individual. The person who would know
6 what she told this individual would be that individual.

7 MR. SHAINIS: Your Honor, what we had suggested to
8 the Bureau last week was that we stipulate to the facts and
9 only to the facts, which I believe have never been disputed
10 by the Bureau, and those facts are contained in the
11 declaration that is attached to the Bureau's motion of the
12 declaration of this other individual.

13 MR. KELLER: Yes, if the basic facts there are
14 stipulated to, then we would waive the need for either
15 witness. It's basically just the stipulation that Ms.
16 Wypijewski made this call at this time and stated these one
17 or two things, period.

18 CHIEF JUDGE CHACHKIN: Do you have any objection
19 to stipulating that that's what Ms. Thompson and Ms.
20 Wypijewski discussed?

21 MR. SCHAUBLE: Your Honor, I don't think there's
22 necessarily any big dispute about the facts. I think the
23 Bureau's problem is the Bureau doesn't see the relevance of
24 this.

25 CHIEF JUDGE CHACHKIN: Well, wait a minute. I'm

1 not going to prevent them from putting out a defense that
2 this was his state of mind as a result of what he heard from
3 Ms. Thompson. That's not the question. We're only
4 discussing here the particular relevance, if you want, later
5 on. Are you willing to stipulate that this is, in fact,
6 what Ms. Wypijewski told Ms. Thompson?

7 MR. KNOWLES-KELLETT: What precisely --

8 CHIEF JUDGE CHACHKIN: It's in your motion. It's
9 in your motion. You attach the affidavit.

10 MR. KELLER: In other words, that you either
11 stipulate this factor -- see, if we bring Ms. Thompson all
12 the way across the country, her testimony is going to be all
13 of five minutes.

14 MR. SHAINIS: It doesn't make sense.

15 MR. KELLER: Her testimony is going to be less
16 than what is in this affidavit, essentially, then however
17 long you take to cross-examine her over facts that I don't
18 think the Bureau has ever disputed, if they've not
19 implicitly admitted it.

20 CHIEF JUDGE CHACHKIN: We're talking about
21 attachments by --

22 MR. KELLER: Yes, the affidavits.

23 CHIEF JUDGE CHACHKIN: That are attached.

24 MR. KNOWLES-KELLETT: Okay.

25 CHIEF JUDGE CHACHKIN: You can make any argument

1 you want. All we're doing is, are you willing to stipulate
2 that this is, in fact, the nature of the conversation
3 between these two individuals?

4 MR. SCHAUBLE: Your Honor, I think subject to the
5 right to argue that this whole matter is irrelevant --

6 CHIEF JUDGE CHACHKIN: I'm not precluding you from
7 making that argument. I'm just saying, are you willing to
8 stipulate that this was the nature of the conversation
9 between these individuals?

10 MR. KNOWLES-KELLETT: Can I just relate the facts
11 as I understand them from Ms Wypijewski? That's how you
12 pronounce it -- it's W-Y-P-I-J --

13 MR. KELLER: How do you pronounce it?

14 MR. KNOWLES-KELLETT: W-Y --

15 MR. KELLER: No, how do you pronounce it?

16 MR. KNOWLES-KELLETT: "Dewpieski."

17 MR. KELLER: "Dewpieski?"

18 MR. KNOWLES-KELLETT: Like D-I-P-I-E --

19 MR. KELLER: "Dewpieski?" Okay.

20 MR. KNOWLES-KELLETT: I believe this is the case,
21 Your Honor, and we'd stipulate to this, that there were two
22 matters ongoing at the time. It was an investigation Mr.
23 Kay had requested regarding the Thompson station and there
24 was a finders preference matter.

25 Ms. Wypijewski was handling the investigation

1 regarding the station. She called Ms. Thompson regarding
2 that investigation, told her that Ms. Thompson said she
3 hadn't been operating the station -- I don't know, for a
4 period of two years later. I'm foggy on the figure, but
5 long enough that it would be canceled.

6 Ms. Wypijewski said, your station is going to be
7 canceled and the finders preference will be dismissed,
8 because you're not allowed to file a finders preference
9 while we're doing an investigation. And, the woman said,
10 well, I want this station. She said, you're free to apply
11 for it just like anybody else. And, I think that that's
12 what the testimony that they wanted stipulated to.

13 CHIEF JUDGE CHACHKIN: I assume the testimony they
14 want stipulated to is this affidavit.

15 MR. KELLER: Is there anything in this affidavit
16 that's inconsistent with that?

17 MR. KNOWLES-KELLETT: Well, this affidavit implies
18 that she was calling regarding the finders preference
19 request, you know, and she was calling regarding an
20 investigation that she was doing.

21 MR. KELLER: Was Mr. Kay apprised of the status of
22 that investigation, as has been the Bureau's stated
23 practice?

24 MR. KNOWLES-KELLETT: I can't tell you exactly,
25 Your Honor.

1 MR. KELLER: Was he given --

2 MR. KNOWLES-KELLETT: I know that at the time, I
3 shared an office with Ms. Wypijewski. She talked with Mr.
4 Kay constantly on the phone about these investigations.
5 Whether it was at this time he was apprised, I don't know.
6 I know at an earlier investigation --

7 MR. KELLER: Did she provide him with copies of
8 any of the letters that she sent to Mr. Thompson regarding
9 the investigation? Not the finders preference regarding the
10 investigation. Because the Bureau has stated in previous
11 arguments that we've made that, that's the Bureau's standard
12 practice, to send copies to the Complainants in an
13 investigation.

14 CHIEF JUDGE CHACHKIN: Well, before we get too far
15 into this, did Kay have a conversation with Ms. Thompson?

16 MR. KELLER: With Ms. Thompson? Yes.

17 CHIEF JUDGE CHACHKIN: And, regardless what she
18 stated in this affidavit, is Kay saying that this is what
19 Ms. Thompson related to Mr. Kay?

20 MR. KELLER: Yes.

21 MR. SHAINIS: Yes.

22 CHIEF JUDGE CHACHKIN: In essence?

23 MR. SHAINIS: Yes.

24 CHIEF JUDGE CHACHKIN: Well, this is all that
25 we're concerned about, Kay's state of mind, what he was told

1 by Ms. Thompson.

2 Now, it's not important what Ms. Wypijewski might
3 have said or not have said to Ms. Thompson. What we're
4 talking about here is this Kay conversation with Ms.
5 Thompson, what was related to him, as far as state of mind
6 is concerned.

7 MR. KNOWLES-KELLETT: And, I think what they're
8 asking implicitly, Your Honor, I think you're right that
9 what Ms. Wypijewski told Ms. Thompson really doesn't matter,
10 it's what Ms. Thompson told Kay that affected his state of
11 mind.

12 But, however, what I think they're asking by this
13 stipulation is that we waive our right to cross-examine Ms.
14 Thompson about these matters.

15 CHIEF JUDGE CHACHKIN: Well, we don't need Ms.
16 Thompson. Mr. Kay can testify about what he was told by Ms.
17 Thompson, since it's not being offered for the truth. It's
18 being offered to show what his state of mind was, what he
19 was told. If he was told something that was erroneous, it
20 still doesn't matter, cause we're dealing with state of
21 mind.

22 Now, if you want to challenge what Mr. Kay said by
23 calling Ms. Thompson and say, I never told him anything like
24 that, that's your burden. That's not Kay's burden. We have
25 here an affidavit which states this. So, this is some truth

1 of what was related to Mr. Kay, but we'll have to wait and
2 see what Mr. Kay says. So, we don't have to stipulate to
3 this if you don't want to, but the affidavit is there. And,
4 if you want to challenge Ms. Thompson, you can call her as a
5 witness. But, they don't have to call Ms. Wypijewski as a
6 witness for state of mind purposes. Do we understand what
7 I'm saying?

8 MR. SCHAUBLE: Yes, Your Honor. You're also
9 saying that under those circumstances, Ms. Wypijewski's
10 testimony would not be necessary?

11 CHIEF JUDGE CHACHKIN: Absolutely.

12 MR. KELLER: Under those understandings, we'll
13 withdraw for the moment those two witnesses.

14 CHIEF JUDGE CHACHKIN: All right. Now, let's deal
15 with the other four witnesses. Who is Debbie Marshall?
16 What position does she have?

17 MR. SHAINIS: Your Honor, Debbie Marshall is an
18 employee of Mr. Kay's.

19 CHIEF JUDGE CHACHKIN: What position does she
20 hold? I mean, what does she do?

21 MR. SHAINIS: She works in the service
22 department -- I'm sorry, sir, sales.

23 CHIEF JUDGE CHACHKIN: Sales? How long has she
24 been there? I mean, what are the years of her employment?

25 MR. SHAINIS: On and off for the past seven years,

1 approximately, Your Honor.

2 CHIEF JUDGE CHACHKIN: All right, what about Mr.
3 Marshall, Tony Marshall?

4 MR. SHAINIS: Mr. Marshall works in service
5 installation, service and installation.

6 CHIEF JUDGE CHACHKIN: And, how long has he been
7 there?

8 MR. SHAINIS: He's been about ten years, Your
9 Honor.

10 CHIEF JUDGE CHACHKIN: What about Randy French?

11 MR. SHAINIS: Randy French is a service tech over
12 approximately six years, Your Honor, he's been with Mr. Kay.

13 CHIEF JUDGE CHACHKIN: And, Jeffrey Cohen, well,
14 Jeffrey Cohen is a Kay attorney. How long has he been an
15 attorney for Kay?

16 MR. SHAINIS: I believe, Your Honor, since the --
17 about since 1990.

18 CHIEF JUDGE CHACHKIN: All right. Now, in any
19 documents, did you indicate to the Bureau the existence of
20 these individuals?

21 MR. SHAINIS: To the best of my knowledge, Your
22 Honor, no.

23 MR. KELLER: Well, let me consult.

24 (Pause.)

25 MR. SHAINIS: Your Honor, at some point in time,

1 it is our understanding that the Bureau requested a list of
2 employees. Now, Mr. Cohen would not have turned up on a
3 list of employees, but the other two individuals certainly
4 would have.

5 MR. KELLER: And, it's also my understanding, Your
6 Honor, and the Bureau can correct me if my memory is
7 incorrect, but I believe the Bureau has deposed Mr. French
8 and I don't believe they're objecting to Mr. French.

9 MR. SCHAUBLE: Well, that's correct, Your Honor.

10 CHIEF JUDGE CHACHKIN: You're not objecting to Mr.
11 French. All right, so we're talking about three
12 individuals.

13 Now, did the Bureau, which is pretty customary,
14 request in their interrogatories, request the names of all
15 persons who have relevant evidence?

16 MR. KNOWLES-KELLETT: Your Honor, they provided us
17 a list of potential witnesses.

18 CHIEF JUDGE CHACHKIN: I'm not talking about that.
19 I'm talking about were you told about these individuals as
20 having relevant evidence?

21 MR. KNOWLES-KELLETT: We didn't make such a
22 request.

23 CHIEF JUDGE CHACHKIN: You didn't make such a
24 request?

25 MR. SCHAUBLE: Your Honor, I believe we did get --

1 and I'd have to check the interrogatories -- I'd have to
2 double check, but I think we may have gotten a list of
3 employees. We did get a list of employees.

4 CHIEF JUDGE CHACHKIN: But, you didn't interview
5 all of the employees, apparently?

6 MR. SCHAUBLE: That's correct, Your Honor. There
7 were some -- we went through, you know, in deciding who to
8 depose in sort of our second round of depositions under the
9 procedure Judge Sippel set up, we were guided by the list of
10 potential witnesses that Judge -- that Kay produced through
11 Judge Sippel's orders.

12 MR. KELLER: Your Honor, this was a dispute in the
13 earlier case, too. Although I was not representing Mr. Kay
14 at the time, nor was Mr. Shainis, I am aware that there was
15 a dispute at the time over Mr. Kay's being required to
16 provide a list of witnesses. Judge Sippel was requiring not
17 only his witnesses, but including his rebuttal witnesses,
18 before we even knew what the Bureau's case was going to be.

19 As you know, subsequent rulings in this case have
20 been consistent with what Mr. Kay's view has been all along,
21 is that he really didn't have to put on any evidence until
22 he saw what the Bureau's case was. So, it's in that
23 context, the fact that we provided the witness list earlier
24 is not something that we feel we should be bound by,
25 necessarily.

1 CHIEF JUDGE CHACHKIN: Well, the most I've ever
2 required is that, as I say here, once you're provided with
3 the names of the person with relevant evidence, that's
4 sufficient. I've never required other parties to provide a
5 list of witnesses.

6 MR. SCHAUBLE: Your Honor, I will say we have
7 heard of the Marshalls previously. I don't, speaking for
8 myself -- Mr. Knowles-Kellett can correct me if I'm wrong --
9 I have never heard of Mr. Cohen, Mr. Jeffrey Cohen.

10 CHIEF JUDGE CHACHKIN: That's my understanding.

11 MR. KELLER: Let me add one other thing just to
12 put the Bureau's mind at ease -- it may or may not. There's
13 not an effort to work improper surprise here. The Marshalls
14 are employees, and in that sense, they have relevant
15 evidence that many other employees may also have. We've
16 specifically included the Marshalls in direct response to
17 the Bureau's case, also to be offered as impeachment
18 witnesses, which is something we didn't necessarily know we
19 were going to need, until we saw the full nature of what
20 some of the witnesses were going to testify.

21 CHIEF JUDGE CHACHKIN: Well, I think the best way
22 to handle this is, I will permit the Bureau if they wish to
23 depose these individuals, but I will not preclude Kay from
24 calling these individuals. Since you were supplied with a
25 list of employees and Kay had a right, was putting on a

1 rebuttal case, to see who your witnesses were before they
2 made a final determination who their witnesses were.

3 So, if you want to have an opportunity to speak to
4 these individuals either formally or informally, I will
5 afford you that opportunity, but Kay will be permitted to
6 put them on as witnesses. Now, it's up to you what you want
7 to do with these three individuals. If you want to talk to
8 them informally, I will permit that. Of course, Kay can be
9 present at the time. Of course, Kay's counsel will be
10 present, but I'll permit you to deal with them informally,
11 without formal deposition.

12 If you want a formal deposition, you can have
13 that. Which is your pleasure?

14 MR. SCHAUBLE: Your Honor, there is a third
15 possibility, which may be more specific in terms of what
16 these particular individuals -- you know, if we got some
17 more details in terms of what these individuals might
18 testify to, you might be able to --

19 MR. SHAINIS: I think that's what the Judge is
20 suggesting by deposition. Or, informally meeting with them.

21 CHIEF JUDGE CHACHKIN: Yes, if you want to speak
22 to them informally, then you have an opportunity to see.
23 It's just two issues that we're talking about -- well,
24 impeachment, Kay's operations, 308(b), so if you want to
25 deal with them formally, an opportunity would be presented

1 when they come to Washington for you to talk with them,
2 before they testify. If you want to do it more formally,
3 you can. It's up to you.

4 MR. SCHAUBLE: Is it correct, Your Honor, that if
5 we chose to proceed formally through notice of deposition,
6 would we have to give 21 days notice?

7 CHIEF JUDGE CHACHKIN: No, no, I would permit you
8 to depose them when they come to Washington, before they
9 testify.

10 (Pause.)

11 MR. SCHAUBLE: Your Honor, could we review this
12 and report back to you later today?

13 CHIEF JUDGE CHACHKIN: That's fine, that's fine.
14 I just wanted to deal with these matters now so we don't
15 have any hang ups later on.

16 All right, let's proceed with your next witness.

17 MR. SHAINIS: Your Honor, I do have one
18 preliminary matter. At the last hearing session, Kay
19 Exhibit 2 and Kay Exhibit 3 were admitted into evidence --

20 CHIEF JUDGE CHACHKIN: Right.

21 MR. SHAINIS: -- with leave to withdraw to provide
22 the copy that was necessary to the reporter.

23 CHIEF JUDGE CHACHKIN: Correct. Just for the
24 reporter, or will we all need a copy?

25 MR. SHAINIS: Actually, Your Honor, I have copies

1 for everyone.

2 CHIEF JUDGE CHACHKIN: Oh, good. Okay.

3 MR. SHAINIS: Give me a moment, Your Honor?

4 CHIEF JUDGE CHACHKIN: Yes.

5 (Pause.)

6 MR. KNOWLES-KELLETT: Your Honor?

7 CHIEF JUDGE CHACHKIN: Yes?

8 MR. KNOWLES-KELLETT: Mr. Hessman, who was to be
9 the fourth witness today, waiting in the witness room?

10 CHIEF JUDGE CHACHKIN: Yes?

11 MR. KNOWLES-KELLETT: We told him we'd talk to you
12 about when he was allowed to leave the witness room and
13 check back in. It seems to me it would be reasonable for
14 him to check back in at noon today.

15 CHIEF JUDGE CHACHKIN: Do you expect to have this
16 witness on all morning?

17 MR. KNOWLES-KELLETT: No, we have three other
18 witnesses --

19 CHIEF JUDGE CHACHKIN: Oh, before Mr. Hessman?
20 Oh, fine, sure, no question about it. We could do that.

21 MR. KELLER: Your Honor, I do have one other
22 preliminary matter, if you don't mind. There was discussion
23 before the break, before the hiatus, about, this was during
24 the following testimony of Ms. Pfeifer, regarding, you were
25 going to check about whether there were some original

1 signatures on certain documents?

2 MR. SCHAUBLE: Yes. Your Honor, we've searched
3 both the Gettysburg facility and the archives facility in
4 Philadelphia and with respect to the specific exhibits of
5 Carla Pfeifer that were at issue there, we were not able to
6 locate the originals of those particular documents.

7 CHIEF JUDGE CHACHKIN: Well, let me say on that
8 point, assuming for the sake of argument, Mr. Kay denies
9 having signed those documents, and if you want to assert
10 that, in fact, it was Mr. Kay's signature, the burden's on
11 and you'd have to put on a handwriting expert or whatever
12 evidence you have to show that Mr. Kay did it. Otherwise,
13 as far as I'm concerned, I cannot conclude that that's a
14 fact. Even assuming she doesn't remember whether she signed
15 it or not, a certain particular document. The burden is on
16 you, as I said, if Mr. Kay says he didn't sign it, to
17 establish the fact that he did.

18 If you want to put on handwriting experts, it's
19 going to be pretty difficult without any original.

20 MR. KELLER: I wanted to make one other request
21 regarding these exhibits, if I could, specifically Exhibits
22 287 -- excuse me, 297, 298, 299 and 304. And, each of these
23 exhibits is a letter, purporting to be a letter from Ms.
24 Pfeifer, sent to the FCC at various times. And, I note that
25 none of these letters bear an FCC receipt stamp, which is

1 the typical practice when documents are received at the FCC,
2 to have them stamped and received. So, I was wondering in
3 that regard.

4 I also know that Ms. Pfeifer testified either here
5 at the hearing or, certainly, in her deposition, but I
6 believe also at the hearing, that when she was visited by
7 Ben, who I assume would have been Nakamiyo, she provided him
8 with copies of documents. I'm wondering if the Bureau would
9 be willing to stipulate that, at least as to those four
10 exhibits, these are copies of documents provided to the
11 Bureau by Ms. Pfeifer? These are the ones that say, "Carla,
12 attachment" across the top of them.

13 MR. SCHAUBLE: Your Honor, we'd have to take a
14 look at them.

15 CHIEF JUDGE CHACHKIN: All right.

16 MR. KELLER: Then, if not, can we then get stamped
17 receipt copies to show that these documents were actually
18 documents that were received by the Bureau? One or the
19 other, preferably the stipulation.

20 I want to know where the documents came from,
21 that's all. What was the source of these particular copies.

22 MR. SCHAUBLE: Okay. Your Honor, we'll get back
23 and report to counsel for Kay on that matter.

24 CHIEF JUDGE CHACHKIN: All right, all right, let's
25 go on with the first witness.

1 MR. SCHAUBLE: Your Honor, the Bureau calls
2 William Thomas Gerrard to the stand.

3 Whereupon,

4 WILLIAM THOMAS GERRARD
5 having been first duly sworn, was called as a witness
6 herein, and was examined and testified as follows:

7 CHIEF JUDGE CHACHKIN: Please be seated. What
8 exhibit are we dealing with now?

9 MR. SCHAUBLE: 346, Your Honor. That was
10 exchanged.

11 CHIEF JUDGE CHACHKIN: Right, that was the last
12 one.

13 (Pause.)

14 DIRECT EXAMINATION

15 BY MR. SCHAUBLE:

16 Q Sir, will you please state your name and address
17 for the record?

18 A William Gerrard, 1960 South Ocean Boulevard,
19 Monalthan, Florida.

20 MR. SCHAUBLE: Your Honor, I'm handing the court
21 reporter an original and one copy of the document entitled
22 Testimony of William T. Gerrard and ask that it be marked
23 for identification as WTB Exhibit 346.

24 CHIEF JUDGE CHACHKIN: The document described will
25 be marked for identification as Bureau Exhibit 346.

1 (The document referred to was
2 marked for identification as
3 WTB Exhibit 346.)

4 BY MR. SCHAUBLE:

5 Q Mr. Gerrard, do you have a copy of what's been
6 marked for identification as WTB Exhibit 346 before you?

7 A Yes.

8 Q Turn to the last page of the document. Is that
9 your signature?

10 A Yes.

11 Q Is this a true and correct copy of your testimony
12 in this proceeding?

13 A Yes.

14 MR. SCHAUBLE: Your Honor, at this time, I move
15 WTB Exhibit 346 into evidence.

16 CHIEF JUDGE CHACHKIN: Any objection?

17 MR. KELLER: Yes, sir.

18 CHIEF JUDGE CHACHKIN: First of all, is there any
19 voir dire of this witness?

20 MR. KELLER: Yes, sir.

21 MR. SHAINIS: Mr. Keller is going to do the voir
22 dire and possible cross. I'd like to just have a minute to
23 look these over.

24 CHIEF JUDGE CHACHKIN: All right.

25 (Pause.)

1 VOIR DIRE EXAMINATION

2 BY MR. KELLER:

3 Q Mr. Gerrard, have you ever visited Mr. Kay's
4 facilities in Los Angeles?

5 A No.

6 Q Have you ever examined Mr. Kay's billing or
7 loading records?

8 A No.

9 MR. KELLER: Your Honor, we object to the
10 introduction of the testimony. It has no bearing or
11 relevance on this case. Mr. Gerrard has not specifically
12 examined Mr. Kay's billing practices or his record keeping
13 practices. The testimony he is offering, I don't even think
14 they rise to the level of expert opinion. He's just saying
15 this or that was sort of understood in the industry in sort
16 of general terms, but there's nothing specific about Mr.
17 Kay, much less anything definitive about what either FCC
18 regulations require -- which I don't believe the witness is
19 qualified to testify to -- or about the standard industry
20 practices.

21 MR. SCHAUBLE: Your Honor, two responses to that.
22 First, I mean, a lot of this is background in terms of how
23 these sort of stations operate, which I think is at least
24 useful in understanding the record in these sorts of
25 matters.

1 And, two, there is testimony in here concerning
2 his understanding of industry practice concerning loading
3 records.

4 CHIEF JUDGE CHACHKIN: Where is there anything
5 about his understanding?

6 MR. SCHAUBLE: Your Honor, Paragraph 18 forward.

7 MR. KELLER: What is specifically in here? I
8 mean, when I see, for instance, Paragraph 19, there was a
9 general awareness in the industry that the FCC could
10 challenge your information at any time. I mean, that
11 doesn't tell us anything about what the record keeping
12 practices were or should have been, much less even coming
13 close to suggesting that Mr. Kay's practices were non-
14 compliant.

15 I mean, how is this at all relevant to Mr. Kay's
16 loading practices or billing practices?

17 MR. SCHAUBLE: Your Honor, there is one matter,
18 which I believe is not in dispute here, that Mr. Kay
19 testified that on his system, that when customer information
20 changed, the old information was overwritten, and there's
21 testimony in here concerning Mr. Gerrard's understanding of
22 what was necessary in order to --

23 CHIEF JUDGE CHACHKIN: This is the way he kept it.
24 He doesn't put himself forth as a consultant to other
25 companies, to other SMR operators.

1 MR. KNOWLES-KELLETT: Your Honor, he was the head
2 of the major SMR --

3 CHIEF JUDGE CHACHKIN: I understand, but this is
4 his company. That doesn't make him a consultant, in any
5 way, give him information how other operators, small-time
6 operators, operated, that he could speak to the industry.
7 He doesn't make that claim. He could only testify about how
8 he conducted business. That doesn't make him an expert on
9 the industry, to be able to testify about industry-wide
10 practices. That's one problem I have.

11 Secondly, how is this relevant to 308(b)? I
12 assume that's what it's being used for? Well, then what is
13 this being used for?

14 MR. SCHAUBLE: Your Honor, two things. First,
15 since most of the first part of this testimony is -- when I
16 said it's background, we think it's essential background in
17 terms of understanding how these types of stations operate.

18 CHIEF JUDGE CHACHKIN: Well, first of all, do you
19 have any objection to background information?

20 MR. KELLER: Subject to cross-examine, but I think
21 this background information, number one, is already in the
22 record. Number two, most of the background information here
23 has to do with loading formats and I don't believe that --
24 the loading issue is no longer at issue in this proceeding.

25 There was an issue originally designated in this

1 proceeding as to whether or not Mr. Kay had improperly
2 trunked -- excuse me, I said loading. I meant trunking
3 formats. There was once an issue in this proceeding whether
4 Mr. Kay had improperly trunked conventional channels, but
5 that summary decision has long since been granted on that
6 issue. So, I don't know that the information is relevant.

7 To the extent the background and edification is
8 necessary, I believe the other witnesses have already
9 testified in that regard.

10 MR. SHAINIS: And, it seems to me, Your Honor,
11 that if there's background information that's needed, it's
12 clearly susceptible to stipulation rather than coming in
13 through an expert who's questionable whether he's a
14 qualified expert in this respect.

15 MR. SCHAUBLE: Your Honor, I hear nothing in terms
16 of a valid challenge to Mr. Gerrard's qualifications. But,
17 I mean, you know, we choose to provide this -- I mean, Kay
18 seems to be arguing that we should --

19 CHIEF JUDGE CHACHKIN: Well, it does allow the
20 comments through an expert. It could be stipulated,
21 presumably, all this background information could be
22 stipulated as to how these systems operate.

23 MR. KNOWLES-KELLETT: There's no objection as to
24 relevance, Your Honor. There's no objection as to his
25 qualifications --

1 CHIEF JUDGE CHACHKIN: Oh, yes, there has been
2 objections -- what issue does it go to?

3 MR. KNOWLES-KELLETT: Well, it goes to how Kay's
4 systems were --

5 CHIEF JUDGE CHACHKIN: Wait a minute. I asked
6 you, what issue did it go to? Specify a specific issue,
7 which issue does it go to?

8 MR. KNOWLES-KELLETT: The one that we discussed at
9 length, Your Honor, the channel sharing provision, the 313
10 and --

11 CHIEF JUDGE CHACHKIN: What issue is that?

12 MR. KNOWLES-KELLETT: 10(c), whether he violated
13 the Commission's construction and operation requirements.
14 We're in total agreement, Your Honor, that summary decision
15 was rendered with respect to B. This goes go both, actually
16 it goes to both A and C. With respect to A in the 308(b),
17 part of Kay's response was that it was not convenient.
18 Later he told us that he didn't keep records of where people
19 were loaded, except by frequency band and mountain top.

20 Later, Your Honor, we learned that frequency band
21 was a designation for an LTR trunk system which he had never
22 told us was in operation.

23 CHIEF JUDGE CHACHKIN: Has the Commission set
24 forth any rules, any documents whatsoever, governing
25 documents, as to how you're supposed to keep this information?

1 MR. KNOWLES-KELLETT: Your Honor, we told you the
2 place that we have to be --

3 CHIEF JUDGE CHACHKIN: I didn't ask you that. I
4 said, did the Commission put forth in any form or fashion
5 information as to how systems or information of this nature
6 is supposed to be provided by, kept, by licensees?

7 MR. KNOWLES-KELLETT: They did not tell you the
8 form. They told you what the requirement was, Your Honor.
9 The requirement is that you be able to substantiate your
10 loading. And, so, when he didn't tell us what LTR system he
11 was operating, a Spillman type LTR system, we were unable to
12 discern from his records where these people were operating.

13 Later, he told us that they were Spillman type
14 systems and this is, therefore, relevant to --

15 CHIEF JUDGE CHACHKIN: Which rule violation is
16 this relevant to?

17 MR. KNOWLES-KELLETT: 308(b) is what I'm talking
18 about.

19 CHIEF JUDGE CHACHKIN: 308(b) deals with
20 misrepresentation, doesn't it?

21 MR. KNOWLES-KELLETT: 308(b) is a refusal to
22 answer a request --

23 CHIEF JUDGE CHACHKIN: Really?

24 MR. KNOWLES-KELLETT: -- for a written inquiry.

25 CHIEF JUDGE CHACHKIN: Is that what it says under

1 308(b)? I've looked at 308(b), I've looked at Commission
2 rules. Where does it say that?

3 MR. KNOWLES-KELLETT: 308(b) --

4 CHIEF JUDGE CHACHKIN: I have 308(b) here. Show
5 me where it says that, where it says anything about that.
6 Doesn't it deal with misrepresentation that was made in
7 statements to the Commission?

8 MR. KNOWLES-KELLETT: No, it doesn't. The
9 pertinent part here is, "The Commission, at any time after
10 the final and original application, or during the term of
11 any license, may require a permanent applicant and
12 licensee's further written statements of fact to enable it
13 to determine whether such original application should be
14 permitted or denied or its license revoked." And, that's
15 the provision of 308(b) that's relevant.

16 And, 1.17, Your Honor, requires that licensees,
17 when they receive a Commission inquiry, provide a full and
18 complete response.

19 CHIEF JUDGE CHACHKIN: So, what does this have to
20 do with that?

21 MR. KNOWLES-KELLETT: Okay, when Mr. Kay says it
22 wasn't convenient, he didn't keep the records, okay, it
23 turns out, to understand Mr. Kay's records, you have to
24 understand how the systems were operating, and he did not
25 tell us until much later how his systems were operating.

1 CHIEF JUDGE CHACHKIN: That may be neither here
2 nor there. My question is, how is it relevant to any of
3 these issues, his testimony?

4 MR. KNOWLES-KELLETT: First of all, his testimony,
5 referring to what an LTR Spillman-type system is, how LTR
6 trunking works and how you put conventional channels
7 together and operate them as a trunk system, okay, that's
8 relevant to understanding what we needed to know to
9 understand Mr. Kay's billing records.

10 It's also relevant, Your Honor, to this issue in C
11 for the same reason. In C, there's a requirement that you
12 share the channels if you're not fully loaded.

13 CHIEF JUDGE CHACHKIN: And, where is he provided
14 information about Kay?

15 MR. KNOWLES-KELLETT: He didn't provide
16 information about Kay, Your Honor.

17 CHIEF JUDGE CHACHKIN: But, he reviewed Kay's
18 operation?

19 MR. KNOWLES-KELLETT: No, we're asking him the
20 general, technical requirements for how an LTR trunking
21 system works and that's just basic background information,
22 Your Honor, that's relevant to both issues and shouldn't be
23 in dispute. It should just come in.

24 I don't think they're disputing the fact. They're
25 not disputing that this guy's qualified to explain these

1 things. It's just, I don't see that there's any substance
2 to the challenge regarding the technical requirements.

3 CHIEF JUDGE CHACHKIN: Well, we're talking
4 primarily about Paragraph 21, I assume, 20 and 21.

5 MR. KNOWLES-KELLETT: Well, just then, Your Honor,
6 I was talking more about how trunk systems were the
7 background, Paragraphs 12 through 17. I don't think there's
8 any valid objection to a technical description of how these
9 things work.

10 MR. SHAINIS: First of all, the question is, is it
11 necessary? Your Honor may feel it may be necessary, may
12 not. I mean, I don't know why it's necessary to go into the
13 background.

14 MR. KNOWLES-KELLETT: Okay, Your Honor, we haven't
15 seen the transcripts yet, so at best, the testimony
16 regarding the technical operation of these systems has been
17 extremely disjointed. This is a clear, succinct description
18 of how these work and makes for a much clearer record.

19 CHIEF JUDGE CHACHKIN: We're talking about
20 Paragraphs 10 and 11?

21 MR. KNOWLES-KELLETT: I'm talking about 12 through
22 17.

23 CHIEF JUDGE CHACHKIN: Twelve through 17.

24 MR. KNOWLES-KELLETT: Actually, 10 through 17.

25 CHIEF JUDGE CHACHKIN: Would Kay be willing to

1 stipulate that this is --

2 MR. KELLER: We have a problem, Your Honor,
3 because the permit, which we will have some cross-
4 examination on this, we don't agree with precisely the way
5 some of this is worded.

6 Secondly, there is a slightly more difficult to
7 explain -- that may have to wait for some more voir dire
8 and/or cross-examination relevance objection. I believe
9 there is some mixing of apples and oranges here, when we
10 talk about trunk versus conventional systems. There are
11 trunk systems and then there are trunk systems, and the
12 rules -- different rules may apply.

13 MR. KNOWLES-KELLETT: I think, Your Honor, we
14 tried to lay that out. Mr. Gerrard tried to explain that
15 when he discussed quasi-trunk systems.

16 MR. KELLER: Well, I'm referring more to a rule
17 allocation here, Your Honor. There are certain channels in
18 the FCC's rules in Part 90 that are allocated specifically
19 and exclusively for trunk systems, which is to say, when you
20 go in and initially apply for the license, you apply for
21 five, 10, 20 channels and it's a trunk system from the get-
22 go. And, those rules then require certain historical
23 loading records, because they're a -- well, they were at an
24 appropriate time. These rules have since been repealed.
25 But, there are historical reporting requirements on annual

1 benchmarks and you have to report loading.

2 Mr. Kay has never had any such license. Mr. Kay,
3 to the extent that he operates trunk systems at all, they
4 come in one of two flavors. They are either the quasi trunk
5 system, which Mr. Kellett was referring to, or they are
6 trunk systems which have been, in effect, pieced together
7 from conventional channels.

8 Now, I am certainly willing to be corrected on
9 this, but I'm not aware of the situation in which the
10 Commission has ever had a so-called channel recovery order
11 or proceeding against one of these types of licensees. The
12 channel recovery orders that the Commission has put out have
13 been against these what I refer to as pure trunk or
14 allocated as trunk systems.

15 The loading requirements for Mr. Kay -- and I'm
16 not giving testimony here, I'm making a legal argument,
17 require that he be able to justify or document loading at
18 specific times when it was relevant. And, it only became
19 relevant in the context of certain applications. If he made
20 an application that required certain things to be loaded in
21 the circumstances, then he was required in the context of
22 that application to be able to document the loading. And,
23 frequently, when the Commission asked him questions about
24 specific application, he provided responses with the
25 appropriate information.

1 There is nothing in the rules which requires
2 systems such as the one license to Mr. Kay to be able to go
3 back and say, you know, on June 2, on a given date three
4 years ago, my loading was less than such. If he had
5 operated one of these pure trunk systems, that might be the
6 case, because in those circumstances, he would have been
7 required to make annual loading reports. Those are the
8 types of systems that this witness operated during his
9 career in the SMR industry, not the types that Mr. Kay
10 operated.

11 MR. KNOWLES-KELLETT: We disagree with the legal
12 analysis, Your Honor. We believe that there was no
13 difference between a pieced-together trunk system and a
14 trunk system that was originally allocated in five or ten
15 channel blocks. They were in that same channel block and
16 the same loading rules applied at the end.

17 MR. KELLER: We can respectfully disagree what
18 rules apply, but they were not in the same channel block.

19 MR. KNOWLES-KELLETT: Okay.

20 MR. KELLER: They were in the same band, but they
21 were not --

22 MR. KNOWLES-KELLETT: You can mix and match, Your
23 Honor, but there was no differentiation in rules. And, we
24 can argue precedent about that.

25 We disagree also, Your Honor, with this analysis

1 that you're not required at any time to substantiate your
2 loading when asked. We firmly believe that that was the
3 case. We'll be arguing precedent on that, as well.

4 I don't know that this goes at all to the issue
5 we're talking about, with respect to the relevance of these
6 paragraphs, Your Honor. I think what technically happened,
7 how these things technically worked, you know, they may have
8 some question as to the wording, but basically, this is
9 relevant to the issues they described and should come in.

10 CHIEF JUDGE CHACHKIN: Well, they certainly did
11 not write the course examination -- but, insofar as loading
12 records are concerned, I assume there's been objection to
13 that, too?

14 MR. KNOWLES-KELLETT: The specifics of the
15 objections --

16 MR. KELLER: Well, the specifics of the objections
17 are, number one, I don't think this witness has any
18 information specifically about Mr. Kay, and number two, I
19 don't believe, even accepting the language as written here,
20 I don't think it rises to the level of an opinion as to
21 standard industry practice. The only foundation here is
22 that this is the way I did it, plus -- I mean, for example,
23 just look at Paragraph 19.

24 "Prior to the end of 1992, there was a general
25 awareness in the industry that the FCC could challenge it."

1 I don't know that that's an opinion that has much probative
2 value. That's just a general report from what somebody
3 heard while walking around the exhibits at a trade show, I
4 guess. I don't know.

5 CHIEF JUDGE CHACHKIN: What is your response to
6 those paragraphs, 18 on?

7 MR. KNOWLES-KELLETT: I think with respect to the
8 general awareness in the industry, Your Honor, that is
9 directly relevant to Kay's state of mind about whether or
10 not he was required to provide this stuff when asked. You
11 know, he could testify that he didn't know --

12 CHIEF JUDGE CHACHKIN: Wait a minute. You're
13 putting this individual on as an expert.

14 MR. KNOWLES-KELLETT: Right.

15 CHIEF JUDGE CHACHKIN: You've got to establish
16 that he's got some knowledge of industry practice. This
17 statement doesn't deal with industry practice just because
18 they were aware in the industry that the Commission could
19 challenge at any time your information or records as to
20 loading. It doesn't make them an expert as to what
21 practices should be followed by SMR's, in terms of keeping
22 information on loading. I assume that's what this is being
23 offered for?

24 MR. SCHAUBLE: Your Honor, when you take a look at
25 Paragraph 7 here, the witness --

1 CHIEF JUDGE CHACHKIN: Paragraph 7?

2 MR. SCHAUBLE: -- describes in considerable detail
3 here his, you know, knowledge of the industry, his, you
4 know, position.

5 MR. KNOWLES-KELLETT: This is a guy who organized
6 the industry, Your Honor.

7 MR. SHAINIS: Well, his knowledge of the industry
8 is certainly not at issue. I mean, that's an irrelevancy.
9 The question is, does he have any knowledge of Mr. Kay's
10 practices, and he does not. On voir dire, he stated he's
11 never seen any of Mr. Kay's records, he's never visited Mr.
12 Kay's place of business.

13 MR. SCHAUBLE: Your Honor, with respect to the one
14 specific point he's talking about here, the testimony
15 establishes, and there is no dispute on here, that Mr. Kay
16 did not keep -- that Mr. Kay's system overwrote the
17 information, the customer information that was modified.
18 And, I think what he's talking about here is directly
19 relevant to the practice and I don't think there's any
20 dispute that that was Mr. Kay's practice. Mr. Kay has
21 testified to that point.

22 MR. SHAINIS: I mean, Your Honor, they could have
23 provided this witness the documentation that was provided to
24 them in discovery. They chose not to do so. They could
25 have flown the witness out and made arrangements to examine

1 Mr. Kay's records at his place of business. They chose not
2 to do so.

3 It's outrageous now to have this witness fly
4 across country under these circumstances, and to the extent
5 that the Bureau is not, I apologize to the witness for
6 having done that. But, now, all of a sudden, to say that
7 this witness is going to be qualified to discuss Mr. Kay's
8 practices is absurd.

9 MR. SCHAUBLE: Your Honor, we never said we were
10 discussing Mr. Kay's records. It's that we were talking
11 about his understanding of industry practices.

12 CHIEF JUDGE CHACHKIN: Well, for what purpose? I
13 mean, what's the conclusion you want to reach about it?

14 MR. SHAINIS: I mean, industry requirements are
15 irrelevant. There is no such thing as an industry
16 requirement anyway.

17 MR. SCHAUBLE: I said industry practices, not
18 industry requirements.

19 MR. SHAINIS: Industry practices are irrelevant.

20 MR. SCHAUBLE: Well, I find that interesting, Your
21 Honor, because you look at their experts, there's
22 considerable --

23 MR. SHAINIS: Yes, but our expert has examined Mr.
24 Kay's records.

25 MR. KELLER: He's examined Mr. Kay's records and

1 he has also specifically laid a foundation for extensive
2 review of other typical systems in the industry of the type
3 and size of Mr. Kay's.

4 MR. SCHAUBLE: Well, we can argue about that.

5 (Pause.)

6 MR. KNOWLES-KELLETT: Your Honor, the sufficiency
7 of Kay's particular records, we believe, is a matter for the
8 Court, for you to determine, and not for the expert to
9 determine. Specifically whether the FCC feels that the
10 licensee is an extension of loading. So, that's the reason
11 why we didn't ask Mr. Gerrard to do an extensive review of
12 Kay's particular system. Gerrard's expertise goes to what
13 the industry practices in this regard were and what they
14 were. But, Kay arguing that he didn't know about these
15 requirements -- Mr. Gerrard, who organized the industry, who
16 did industry meetings, involved in industry publications, is
17 the person most pertinent to what the industry practices
18 were in those regards.

19 And, the convenience and the way Mr. Kay
20 dissembled in response to this 308(b), Mr. Gerrard's
21 statement of practice is that it's relevant to those issues,
22 Your Honor.

23 CHIEF JUDGE CHACHKIN: In what way? What
24 conclusion do you want me to reach? That keeping records
25 was contrary to industry practice? What conclusion do you

1 want me to reach with this testimony? You're putting on an
2 expert. Presumably, some theoretical questions have been
3 put to him and he's answering it. What's the conclusion you
4 want me to reach?

5 MR. KNOWLES-KELLETT: I think that Mr. Kay should
6 have been prepared for our 308(b) letter, Your Honor. That,
7 you know, the way he was overwriting tapes every two weeks
8 to eliminate all historical records was improper.

9 CHIEF JUDGE CHACHKIN: He doesn't say that.

10 MR. KNOWLES-KELLETT: Mr. Gerrard? Mr. Gerrard
11 says the industry was fully aware that the Commission could
12 challenge your loading records and you had to maintain
13 historical information for at least some period of time
14 after -- some period of time. And, I think we can assume
15 that that's more than two weeks. Mr. Kay's maintained it's
16 only for two weeks.

17 CHIEF JUDGE CHACHKIN: Well, I don't think that
18 this individual has no knowledge of Kay's practices, number
19 one.

20 MR. KNOWLES-KELLETT: I would not say he has no
21 knowledge. He's reviewed some of Kay's knowledge. We're
22 not asking him to testify --

23 CHIEF JUDGE CHACHKIN: All I'm basing it on is
24 what's written here. There's no mention in this document of
25 him having any knowledge of Kay's practice.

1 Also, the statements here that he's gone to
2 sessions relating to equipment and involved with discussion,
3 there's nothing specifically here stating that there was a
4 specific industry practice, that sort of method, a standard
5 method of use, for keeping loading records.

6 MR. KNOWLES-KELLETT: I believe that he --

7 CHIEF JUDGE CHACHKIN: All he's made a statement
8 here, basically, which I assume we don't need Mr. Gerrard to
9 testify about, that the Commission made clear in their
10 rulemaking that they still retained the right to examine
11 loading records of licensees. I mean, that's what the rule
12 says, that's what the Commission says in their rulemaking,
13 where they eliminated the specifics as to loading records.
14 They said they still retain the right to review licensees'
15 loading records.

16 But, if that's all he's saying, I don't know what
17 we need expert testimony for. So, as far as I'm concerned,
18 I will not receive the portions of this document relating to
19 the keeping of loading records.

20 Now, insofar as the other material is concerned,
21 if all you're offering them for is background purposes, then
22 that's not binding. I mean, what do you mean by background
23 purposes?

24 MR. SCHAUBLE: Your Honor, we think how these
25 stations operated is necessary in order to understand one,

1 the contents of Mr. Kay's records; two, it's relevant to how
2 loading criteria applied to these various stations.

3 CHIEF JUDGE CHACHKIN: We're talking about the
4 trunking, aren't we?

5 MR. KNOWLES-KELLETT: Conventional trunking.

6 CHIEF JUDGE CHACHKIN: Well, did Kay have
7 conventional trunking? According to Kay's counsel, he
8 didn't have conventional trunking. It was something that he
9 put together?

10 MR. KNOWLES-KELLETT: Well, he did have
11 conventional trunking.

12 MR. KELLER: Yes, Your Honor, that's a difference
13 in terms. Kay did operate both trunk systems and quasi-
14 trunk systems and conventional stations. Our argument is
15 that when you're looking at the pure trunk systems -- I
16 maintain there are different sets of rules that apply,
17 depending on where the channels were, where the licenses
18 were derived from. My point does not go to the technical
19 operation of the trunk system.

20 CHIEF JUDGE CHACHKIN: Well, what I will do, I
21 will withhold a ruling as to the material dealing with
22 Paragraphs 10 through 17 --

23 MR. KELLER: Do I understand --

24 CHIEF JUDGE CHACHKIN: -- until you cross-examine.

25 MR. KELLER: Are we striking 18 through 21, is

1 that what it is?

2 CHIEF JUDGE CHACHKIN: Yes.

3 MR. KELLER: Okay.

4 CHIEF JUDGE CHACHKIN: I'm not receiving 18
5 through 21.

6 MR. KELLER: So, are we ready for cross-
7 examination?

8 CHIEF JUDGE CHACHKIN: Yes.

9 CROSS-EXAMINATION

10 BY MR. KELLER:

11 Q Mr. Gerrard, would you turn to Paragraph 4 of your
12 report, please? You state there that your company advanced
13 in 1996 to the 11th largest SMR provider, measured by number
14 of subscribers. Approximately how many subscribers was
15 that?

16 A Ten's of thousands, but I just don't remember.

17 Q More than 20,000 or less than 20,000?

18 A I don't recall. We just went by the industry
19 publication that listed all the different companies, and
20 that was something from that.

21 Q When you say the industry publication, would this
22 have been a publication put out by AMTA?

23 A No, it was, I think, RCR. They did a survey once
24 a year.

25 Q Was Mr. Kay's company, Lucky's Two-Way or James A.

1 Kay, listed on that survey, if you know?

2 A Not that I recall, but I --

3 Q I'd now like you to turn to Paragraph 6. The
4 provider of management and billings software, you state that
5 this was a proprietary system. You contracted for the
6 specific design of this?

7 A Yes.

8 Q With whom did you contract?

9 A Robert Dequar Associates, a software house.

10 Q And, possibly how long did it take them to develop
11 this software?

12 A I don't think the software was ever totally
13 developed. It seems like it goes on forever, but the
14 initial package took a good six months or so, as I recall.

15 Q Do you recall approximately how much it cost you
16 to have this developed?

17 A No, I don't.

18 Q Was it a little bit more than \$1,000?

19 A Yes.

20 Q More than \$20,000?

21 A I don't remember.

22 Q Well, you state also that it's been marketed for
23 use by others. What price do you charge for it, or did you
24 charge for it when it was marketed to others?

25 A We did. I want to say that we charged in the

1 early tens, \$10,000, \$15,000 for the package.

2 Q Are you familiar with software marketed by John
3 Mitchell Company?

4 A No.

5 Q Are you familiar with software marketed by IBA?

6 A I know the name, but I'm not familiar with the
7 program, no.

8 Q Are you familiar with any of the software packages
9 that are marketed for use by small to medium-sized SMR's?

10 A Familiar with a company that did like Easy Bill
11 and I'm familiar with some individuals who developed their
12 own software.

13 Q Are you aware that there are several software
14 packages marketed for small to medium-sized SMR's,
15 specifically for the billing that, in fact, do overwrite
16 records when there are changes made?

17 MR. SCHAUBLE: Objection to the time frame, Your
18 Honor.

19 MR. KELLER: Well, to this day, but I'll limit the
20 question to --

21 CHIEF JUDGE CHACHKIN: I'll overrule.

22 BY MR. KELLER:

23 Q -- the early 1990's?

24 A Okay, I guess you better ask me again, now?

25 Q My question is are you aware or are you not